



# Decision

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**Matter of:** Morrish-Wallace Construction d/b/a Ryba Marine Construction Co.

**File:** B-423796.2

**Date:** February 5, 2026

J. Christopher White, Esq., Ronald D. Sullivan, Esq., and Bret S. Wacker, Esq., Clark Hill, PLC, for the protester.

John Staniszewski, Esq., Mott Staniszewski PLC, for E.C. Korneffel Co., the intervenor. Shannon McCurdy, Esq., Matthew R. Keiser, Esq., and Kyle T. Shaw, Esq., Department of the Army, for the agency.

Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Protest that the agency unreasonably determined that the awardee's failure to acknowledge a solicitation amendment was a minor informality is sustained where the record shows that a defect in the awardee's bid was material.

## DECISION

Moorish-Wallace Construction Co. d/b/a Ryba Construction Co., of Cheboygan, Michigan, protests the award of a contract to E.C. Korneffel Co., of St. Clair Shores, Michigan, under invitation for bids (IFB) No. W911XK25BA024, issued by the Department of the Army, Corps of Engineers (Corps) for construction services. Ryba argues that the agency unreasonably determined that Korneffel's failure to acknowledge an amendment was a minor informality.

We sustain the protest.

## BACKGROUND

On June 4, 2025, the Corps issued the IFB for the construction of a new steel pile offloading platform, which will provide access to the West Dickinson Island Confined Disposal Facility in St. Clair County, Michigan. Agency Report (AR), Tab 1, IFB at 1, 3. The offloading platform will primarily be used by marine operations as a transfer site to offload equipment, including dozers, excavators, off-road trucks, material handlers, and cranes, and material, such as dredged sediment and soil. *Id.* at 3.

The IFB contemplated the award of a single fixed-price contract to the lowest-priced bidder who is found to be responsive and responsible. IFB at 8. As part of their bids, the IFB instructed bidders that they were required to submit documentation acknowledging receipt of any amendment. *Id.* at 9. The IFB advised that if bidders did not comply with the solicitation's instructions, then they could be found ineligible for award. *Id.* at 10.

The agency thrice revised the IFB. Contracting Officer's Statement (COS) at 1. The first amendment provided updated wage determinations and a list of attendees at a site visit. *Id.* The second amendment included an additional update to the wage determination, and revised plan sheets and specific sections. *Id.*

The third amendment included another update to the wage determination and revised plan sheets. COS at 1; AR, Tab 7, IFB, amend. 3 at 1. The wage determination was updated to include new labor rates and fringe benefit contribution rates. COS at 1. The revised plan sheets increased the size and weight of the sheet pile cap (*i.e.*, a capping structure placed on top of the sheet pile walls). *Id.* Specifically, the sheet pile cap was changed from one size to a slightly larger size (*i.e.*, C 15x33.9 to MC 18x42.7).<sup>1</sup> *Id.* at 1-2. The previous sheet pile cap would not accommodate the dimensional irregularities of the sheet pile wall. *Id.*; *see also* AR, Tab 2, Req. for Information (RFI) at 8-9. The agency estimated the increased size would cost at least \$21,000 in extra materials. COS at 1.

Prior to the July 29, 2025, bid opening, six bidders, including Korneffel and Ryba, submitted bids. AR, Tab 12, Bids Abstract at 1-2. Korneffel submitted the lowest-priced bid (\$1.895 million); however, the agency determined that, while the firm acknowledged the first and second amendments, it failed to acknowledge the third amendment. AR, Tab 13, Internal Agency Memorandum at 2. Ryba submitted the second-low bid (\$2.307 million). AR, Tab 12, Bids Abstract at 1.

On July 31, the Corps notified Korneffel that its bid was found non-responsive because the firm failed to acknowledge the third amendment. AR, Tab 15, Non-Responsive Bidder Letter at 1-2; AR, Tab 14, Correspondence Between Agency and Korneffel at 2-3. Later that day, Korneffel responded by submitting a signed copy of the amendment and explaining that it did not see the amendment prior to bid opening. AR, Tab 14, Correspondence Between Agency and Korneffel at 2. The firm also explained that its failure to acknowledge the amendment was a minor informality because its wages paid exceed those set in the wage determinations and the change to the steel pile cap size was insignificant. *Id.*

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<sup>1</sup> American standard (C) channels have tapered flanges, while miscellaneous channels (MC) have flat flanges.

On August 1, the Corps responded that Korneffel's failure to acknowledge the amendment was not a minor irregularity. AR, Tab 14, Correspondence Between Agency and Korneffel at 1. Korneffel then filed a protest with our Office.

Korneffel argued that the Corps unreasonably rejected its bid because the third amendment was not material, and that the agency should have allowed Korneffel to cure the deficiency or waive the defect. AR, Tab 17, Korneffel's Protest at 2. In this regard, the firm argued that the amendment had a negligible effect on the price or the scope of work. *Id.* As to price, the firm asserted that, as a union contractor, it is obligated to pay labor rates exceeding the wage determinations. *Id.* As to the scope of work, the firm asserted that the increased steel pile cap size constitutes a very minor (i.e., \$2,386) increase in costs. *Id.*

After reviewing the allegations, the Corps revised its determination that Korneffel's bid was non-responsive. AR, Tab 19, Contracting Officer (CO) Redetermination Memorandum at 1. The Corps concluded that the updated wage determination impacted only the wage rates and fringe benefits for landscape laborers, which was not applicable to the procurement. *Id.* at 1. The Corps also concluded that the revision to the steel pile cap size would result in only a \$21,000 increase in price, which was negligible given that such costs amounted to 1.1 percent of the total contract value. *Id.* As a result, the Corps notified our Office that it would take corrective action to include reinstating Korneffel's bid and issuing an award to the firm, and we subsequently dismissed the protest as academic. *E.C. Korneffel Co., B-423796, Sept. 30, 2025* (unpublished decision).

On October 7, the Corps awarded the contract to Korneffel and notified Ryba that its bid was unsuccessful. AR, Tab 25, Contract Award at 2; AR, Tab 26, Ryba Debriefing Req. at 1. Thereafter, Ryba filed this protest with our Office.<sup>2</sup>

## DISCUSSION

Ryba contends that the agency unreasonably determined that Korneffel's failure to acknowledge the third amendment was a minor informality. Ryba argues that an agency has no legal authority to waive a wage determination. Protest at 11-12. Ryba also argues that the revision to the sheet pile cap size constitutes a material change in the scope of the contractor's obligations. *Id.* at 12-13.

The Corps responds that Korneffel's failure to acknowledge the amendment was a minor informality and, pursuant to Federal Acquisition Regulation (FAR) section 14.405, Korneffel could cure this deficiency. Memorandum of Law (MOL) at 1-5. The Corps explains that Korneffel's failure to acknowledge the wage determination was immaterial

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<sup>2</sup> GAO was closed from October 1 through November 12, 2025, due to a lapse in appropriations. On November 13, following enactment of legislation that included funding for GAO, our Office resumed normal operations.

because it did not apply to workers employed under this contract. *Id.* at 3-4. Similarly, the Corps argues that Korneffel's failure to acknowledge the revision to the sheet pile cap size was immaterial because the revision had only a negligible effect on price. *Id.* at 4-5. The Corps explains that the revised cap size adds between \$21,500 and \$34,752 to Korneffel's bid, which amounts to only 1.1 to 1.8 percent of the total value of the contract and only 5 to 8 percent of the difference between Korneffel's and Ryba's bid prices. *Id.*

A bidder's failure to acknowledge a material amendment to an IFB renders the bid nonresponsive, since absent such an acknowledgement the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amendment. *Lumus Constr., Inc.*, B-287480, June 25, 2001, 2001 CPD ¶ 108 at 2. On the other hand, where a bidder's failure to acknowledge an amendment is not material, the agency either shall give the bidder an opportunity to cure any deficiency or waive the deficiency, whichever is most advantageous to the agency. FAR 14.405(d); *Northern Sealcoating & Paving, Inc.*, B-299393, Mar. 30, 2007, 2007 CPD ¶ 67 at 2. An amendment is not material if it would only have a negligible effect on price, quantity, quality, or delivery of item bid upon. FAR 14.405(d)(2); *Northern Sealcoating & Paving, Inc.*, *supra*. No precise rule exists to determine whether a change is negligible; instead, such determination is based on the facts of each case. *Morris, Inc.*, B-407296, Nov. 28, 2012, 2012 CPD ¶ 330 at 3.

Regarding the wage determination, we disagree with Ryba that Korneffel's failure to acknowledge the wage determination was a material defect. An amendment increasing a wage rate mandated by the Davis-Bacon Act for a certain trade is material only where there exists a reasonable possibility that the trade's services will be required in the performance of the contract. *Promethean Constr. Co., Inc.*, B-255222, Feb. 7, 1994, 94-1 CPD ¶ 78 at 2. This is true regardless of how minimal the revisions are because the wage rates are mandated by the Act, and the bidder has no legal obligation to pay the minimum wage rates without acknowledgment of the amendment. *ABC Project Mgmt., Inc.*, B-274796.2, Feb. 14, 1997, 97-1 CPD ¶ 74 at 2.

Here, the revised wage determination increased the wage rates for landscape laborers. Compare AR, Tab 8, Wage Determination, July 4, 2025, at 4 with AR, Tab 9, Wage Determination, July 11, 2025, at 4. Significantly, the record shows that the agency determined that this wage determination is inapplicable to this contract. AR, Tab 19, CO Redetermination Memorandum at 1 (stating "the updated wage rate for the classification of Landscape Laborer is not applicable to this contract"). Additionally, the agency determined that Korneffel did not propose to use landscape laborers. *Id.*; COS at 2 ("Landscape Laborers are not required for this contract and Korneffel did not propose a landscape laborer for this requirement."). Instead, the agency explains that the labor categories that will be employed for this contract were affected by wage determinations accompanying the first and second amendments, which Korneffel acknowledged. COS at 2-3. Thus, we deny this allegation because the wage determination was immaterial as it did not increase a wage for a particular trade to be employed on this requirement.

Conversely, we agree with Ryba that Korneffel's failure to acknowledge the revised sheet pile cap size was a material defect. As noted above, the agency argues that the defect was immaterial because its effect on price was negligible.<sup>3</sup> MOL at 4-5. Price, however, is not the only dispositive factor in determining if an amendment is material. *Northern Sealcoating & Paving, Inc., supra*. Rather, an amendment is deemed material to an IFB if the amendment adds requirements to contract performance which were not contained in the original IFB. *Doyon Construction Co., Inc.*, B-212940, Feb. 14, 1984, 84-1 CPD ¶ 194 at 4; see also *Grade-Way Constr. Co. v. United States*, 7 Cl. Ct. 263, 266 (1985) ("It must be concluded that if the defect is one which the government cannot waive, FAR § 14.405 cannot apply.").

In *Doyon*, the protesting firm argued that an award made to the low bidder was improper because the low bidder failed to acknowledge a material amendment to the IFB for construction of an aircraft hangar. *Doyon Construction Co., Inc., supra*, at 1. During the solicitation period, the agency amended the IFB to revise the design specifications for roof subgirts. *Id.* at 3. The agency and low bidder argued that the revision was immaterial because it did not affect the cost of performance and concerned only a minor construction detail. *Id.* at 4. Our Office disagreed, however, and found that the revision was material because, even if the effect on price was trivial, the amendment changed the performance requirements, and the low bidder would not be legally obligated to follow them unless it acknowledged the amendment. *Id.* As a result, we concluded that the low bid should have been rejected as nonresponsive. *Id.*

Similarly, in *Northern Sealcoating & Paving*, the protesting firm challenged the rejection of its low bid as nonresponsive for failing to acknowledge a solicitation amendment. *Northern Sealcoating & Paving, Inc., supra* at 1. The IFB solicited pavement reconstruction services and installation of a restroom building. *Id.* During the solicitation period, the agency amended the IFB to change the exterior features of the restroom building, including revising the shingle and concrete color, and added cedar

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<sup>3</sup> We agree with the agency that the amendment's effect on price is negligible. The record shows that the amendment increases total costs by between \$21,500 and \$34,752, which is only 1.1 to 1.8 percent of Korneffel's proposed bid price, and only between 5 and 8 percent of the \$411,539 difference between Korneffel's and Ryba's proposed bid prices. COS at 3; compare *K Servs.*, B-238744, June 13, 1990, 90-1 CPD ¶ 556 (amendment was immaterial where it increased the awardee's bid by 0.1 percent and was only 6.6 percent of the difference between the bids) and *Cedar Electric, Inc.*, B-402284.2, Mar. 19, 2010, 2010 CPD ¶ 79 at 4 n.6 (opining that amendment was immaterial where it increased the awardee's costs by less than 0.2 percent and was 10 percent of the difference between the two bids) with *Gulf Electric Constr. Co., Inc.*, B-235635, Sept. 26, 1989, 89-2 CPD ¶ 272 at 3 (amendment was immaterial where it increased the low bidder's price above the second-low bidder's price, and constituted more than 30 percent of the difference between the low bidder's price and the protester's bid).

shiplap siding. *Id.* at 1-2. The low bidder argued its rejection was improper because the amendment was immaterial since it imposed no additional legal obligations. *Id.* at 3. The low bidder explained that colored shingles and concrete were already required, and the design drawings indicated that shiplap siding should be used. *Id.* Our Office disagreed, and found that, without acknowledging the amendment, the low bidder was only obligated to provide a restroom built with the original-colored shingles and concrete, and was not obligated to provide shiplap siding because the original IFB was silent as to the type of siding required. *Id.* As a result, we concluded that the agency reasonably rejected the low bid as nonresponsive. *Id.* at 4.

By contrast, in *K Servs.*, the protesting firm argued that the low bid should have been rejected as nonresponsive because it failed to acknowledge an amendment to the IFB for grounds maintenance services. *K Servs.*, *supra* at 1. The agency amended the IFB to decrease the number of shrubs to be pruned and added pruning and mulching of landscaped plants and flowerbeds. *Id.* at 1-2. The low bidder failed to acknowledge this amendment, but the agency found that the defect was immaterial because the impact of the additional work was trivial. *Id.* at 3. The agency explained that the pruning and mulching was already required for other parcels of land and could easily be performed in conjunction with the other responsibilities. *Id.* Our Office agreed, finding that the additional requirement had a negligible impact on the contractor's responsibilities since it was already required to provide pruning and mulching services.<sup>4</sup> *Id.* In other words, we concluded that the amendment did not impact the legal relationship between the parties because the additional services did not increase or otherwise change the contractor's obligations. *Cf. Skytech Aero, Inc. v. United States*, 26 Cl. Ct. 251, 254 (1993) (low bidder's failure to include a corporate seal next to the signature of its secretary, sign every page, and provide correct calculations for some of its prices did not render the bid nonresponsive because such defects were matters of formality, or mere "failure to observe the punctilios of the solicitation").

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<sup>4</sup> Korneffel cites some of our older decisions, *Algernon Blair, Inc.*, B-182626, Feb. 4, 1975, and *Universal Contracting and Brick Pointing Co.*, B-188394, May 17, 1977, as support for the proposition that the agency need only consider the effect on price and quantity when determining materiality. See Intervenor's Comments at 3-4. That position is incorrect because, subsequent to those decisions, our Office found that the value of an amendment as compared with the total value of the procurement is not dispositive of the question of the materiality of the amendment; rather, an amendment is a material defect when it changes the legal relationship between the parties, even if the impact on price is trivial. *Versailles Maintenance Contractors, Inc.*, B-203324, Oct. 19, 1981, 81-2 CPD ¶ 314 at 4; *accord T & S Maintenance Servs.*, B-278598, Feb. 18, 1998, 98-1 CPD ¶ 54 at 2 ("An amendment is material where it would have more than a negligible effect on price, quantity, quality, or delivery, or even if it has only a trivial price impact, if it changes the legal relationship between the parties, such as by increasing or decreasing the contractor's obligations in a material manner.") (internal citations omitted).

Like *Doyon* and *Northern Sealcoating & Paving*, the instant IFB changed the performance requirements by requiring a larger steel pile channel cap. AR, Tab 2, RFI at 8-9. In this regard, the record shows that the larger channel cap is necessary because the smaller channel cap has flanges that do not provide enough area to accommodate the dimensional irregularities of the sheet pile walls set to be used for this requirement (i.e., PZ27 sheet pile wall). *Id.* The larger channel cap, on the other hand, has a wider flange which allows the cap to accommodate such irregularities. *Id.* The contracting officer characterized this change as “substantive in nature.” AR, Tab 19, CO Reconsideration Memorandum at 1. Thus, the amended IFB changed the specifications of the product to be delivered, and failure to acknowledge the amendment was not merely a matter of failing to follow the punctiliois of the solicitation. Consequently, because the amendment made material changes to the IFB, Korneffel’s bid should have been rejected as nonresponsive since it was otherwise not bound to perform in accordance with the specifications.<sup>5</sup> Accordingly, we sustain the protest.

#### RECOMMENDATION

Since we find that the agency should have rejected Korneffel’s bid, we recommend that the contract awarded to Korneffel be terminated for the convenience of the government. The agency may then award the contract to Ryba, as the second-low bidder, provided Ryba is otherwise determined eligible to receive award. We further recommend that the agency reimburse Ryba the costs associated with filing and pursuing its protest, including reasonable attorneys’ fees. The protester should submit its certified claim for costs, detailing the time expended costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Edda Emmanuelli Perez  
General Counsel

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<sup>5</sup> As part of its comments, Korneffel explains that procuring and installing the larger steel channel cap amounts to ordering an additional 2,112 pounds of steel to the 589,572 pounds required and an additional 24 inches of welding to the 15,646 inches required. Intervenor’s Comments at 3. While we recognize that the net effect may be trivial, this does not change the fact that Korneffel’s original bid does not legally obligate the firm to provide the correct channel cap, which determines materiality in this context.